Shorelines Management Early Adopters

Frequently Asked Questions July 2005

For ease of reference, these FAQ's have been grouped into the following general categories:

- Shoreline inventory and analysis
- SMP policies and regulations
- Restoration planning
- SMP update procedures
- Relationship of SMP to other plans/regulations

Shoreline inventory and analysis:

1. Will Ecology place the Whatcom County related landscape approach power point presentation on their web site?

Yes. See http://www.ecy.wa.gov/programs/sea/landscape/

2. Can Ecology show the direct connections between functions listed in the SMA guidelines {chapter 173-26 WAC} and available data on their web site?

Yes, our web site does this. Here is a link to it: http://www.ecy.wa.gov/programs/sea/SMA/st_guide/SMP/inven_analysis/analysis/ecosystem/relationshipTable.html

3. Will Ecology become a clearinghouse for available shoreline related data {federal/state/county/university}?

Our data page will link to existing data sources, but legal restrictions prevent us from acting as stewards of other organizations' data.

SMP policies and regulations:

4. Are local jurisdictions required to adopt into their SMPs Ecology's recommendations for wetlands protection within SMA jurisdiction?

No. The requirement of the SMA is that SMPs must be consistent with the guidelines. The guidelines require use of all current and available science and information to inform the local decision-making process. The recommendations of Ecology on wetlands have been developed with full consideration of current and available science. They represent one approach about which there is reasonable certainty they will accomplish the requirement to protect wetlands. Other methods or

approaches are likely to be found acceptable as long as they are consistent with and supported by the current and available science.

5. Who determines "best available science" for shorelines, the local jurisdictions or Ecology?

Both. While the phrase "best available science" is not used in shorelines management, a similar requirement exists in the SMA. The application of science in the SMA is addressed in section 90.58.100(1) RCW and reflected in the guidelines in section 173-26-201(2)(a)WAC. In the process of updating local SMPs, local governments are directed to "base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available" and "should be prepared to identify the following: (i) Scientific information and management recommendations on which the master program provisions are based; (ii) Assumptions made concerning, and data gaps in, the scientific information; and (iii) Risks to ecological functions associated with master program provisions." Before an updated master program can be approved (and take effect), Ecology must document and determine (see RCW 90.58.090(3), (4) and (5) and WAC 173-26-120(7), that the proposed SMP satisfies SMA and guidelines requirements, including those related to the use of scientific and technical information. It should also be noted, that if local government and Ecology actions are challenged, the growth hearings/shorelines hearings boards and courts will likely play a key role in this determination.

6. Is it appropriate to deviate from science in support of the SMA goals {water dependent uses and public access}?

No. Under the guidelines it is never either appropriate or necessary to deviate from the current and available scientific or technical information that is relevant to the issues at hand. SMPs must satisfy the standard of no <u>net</u> loss of shoreline ecological functions while also providing for necessary and appropriate uses of the shoreline. Where preferred uses such as water dependent or public access uses cannot avoid impacts to shoreline resources, mitigation of impacts, based on thorough scientific understanding of the affected resources and the impacts, is necessary.

7. Will Ecology clarify in its comment letters to local jurisdictions which of their comments are SMA requirements and which are suggestions?

Yes, Ecology will always strive to clearly distinguish between requirements and suggestions in its written correspondence. For those things that are required, it is standard practice to cite a specific provision in law or code that requires the subject action. Generally speaking, any other communication can be considered a suggestion or staff recommendation. However, the review and approval process for SMPs is a collaborative one between local governments and Ecology, and all parties are obliged to keep communicating if questions remain.

Restoration planning:

8. The City of Everett adopted a new SMP in 2002. It is currently subject to appeal. Will the Everett court decision define restoration or other SMP requirements?

The City of Everett SMP was adopted in the absence of guidelines and the review by the CPSGMHB did not include consideration of the guidelines. Therefore, we believe that the determination of the Board with regard to restoration, which is among the subjects currently under appeal to the Court of Appeals, is not directly relevant to the compliance with the (new) 2003 Guidelines. A decision by the Court concerning the issue of restoration that is based on the SMA might reasonably lead Ecology to consider whether amendments to the guidelines might be necessary but could not directly address the interpretation of the guidelines as they currently exist.

In a recent development, the parties in this case have reached a settlement under which the City will be proposing a restoration plan as an amendment (among others) to its SMP.

9. Does Ecology provide any written guidance addressing what restoration planning is required when updating an SMP?

Yes, guidance on restoration planning requirements of the new guidelines is provided at the following link: http://www.ecy.wa.gov/biblio/0406022.html.

SMP update procedures:

10. Will Ecology funnel all comments through the appropriate Ecology SMP project manager {one voice}?

Yes, it is our intent to have all official correspondence related to an SMP update coordinated through our regional office leads who are assigned to work with each local jurisdiction. These individuals however often rely on expertise provided from many Ecology staff (members of an SMP technical assistance team) that will at times offer assistance directly to a local government during the SMP update process. During the process, comments may also originate from other state agencies or public entities that function independently. Again, if you have questions, ask your regional office lead. See also response to item #11.

11. Where can I find the SMP checklist that must be completed by local governments when submitting proposed SMP amendments?

The SMP checklist is available at the following link: http://www.ecy.wa.gov/programs/sea/SMA/st_guide/SMP/submittal_checklist.html. This checklist, when completed by local government satisfies the submittal requirements of WAC 173-26-201(3)(a) and (h). A completed checklist must be

submitted to Ecology with <u>all</u> proposed SMP amendments, including less than comprehensive amendments.

12. Has Ecology established review teams for local jurisdiction SMPs? Who is on the Ecology review teams and how do they function?

Ecology has established internal teams to coordinate our interdisciplinary review of draft SMP products. A copy of the SEA Program strategy for reviewing draft SMPs can be accessed at

http://aww.ecologydev/programs/sea/smatools/SMAdeskmanual/docs/SMP%20-%20Strategy%20for%20SEA%20Review%20-%202nd%20edition.doc, along with the list of SMP teams (as of May 12, 2004) accessed at

http://aww.ecologydev/programs/sea/smatools/SMAdeskmanual/smp/SMP%20Team s%20draft%202.xls. While the primary purpose of the teams is for reviewing draft products submitted to Ecology, there may also be times where the team (or some members of the team) are needed to provide upfront assistance on some aspect of local master program development. Requests for this kind of assistance should be coordinated through the Ecology SMP lead.

13. Will local jurisdictions receive buy-offs from Ecology at major milestones in the SMP planning process?

As a matter of law, the answer to this question is no. Ecology is required to conduct a full public review and comment process prior to making any formal decision on the Master Program pursuant to RCW 90.58.090 and WAC 173-26-120(6). However, Ecology is also tasked with providing support and assistance to local government in RCW 90.58.050. In this context, Ecology may provide review and comment at various stages along the process of development of the master program that address whether or not a particular component, section, policy or provision is consistent with the guidelines when asked for such advice by the local government. As a general matter, such advice can be relied upon as representing the best possible analysis of legal, technical and policy concerns within the limits of the information available to Ecology at the time. If information emerges during the formal public review process conducted after the SMP has been formally submitted that has direct bearing on a particular issue, or other changes occur such as a relevant Court or Board decision, Ecology must consider and incorporate that new information and as such, may reach conclusions different from earlier advice given.

14. Will Ecology provide support and testimony when a SMP goes before the local (city or county) legislative body for approval?

Unfortunately, given Ecology's limited resources, this has to be one of those "as time permits" responses. Ecology has on occasion provided testimony on a case-by-case basis when time and resources allowed it. As always, it is best to coordinate early-on with your regional SMP lead, if such assistance is desired.

15. Will Ecology sponsor regular meetings between early adopters, their consultants and appropriate Ecology staff?

Yes, Ecology is committed to sponsoring regular forums across the state for early-adopter jurisdictions, with the dual purpose of presenting the latest developments in guidance materials, data and technical information, funding, legislation, litigation, etc, and, for the purpose of providing local governments and their consultants with a regular guidelines-specific venue for networking, sharing data and methodologies as new SMPs are being developed. For information on where the next early adopter coordination meeting is in your locale, contact Peter Skowlund, at psko461@ecy.wa.gov or at 360-407-6522.

16. Local jurisdictions would like regular updates from Ecology and other early adopters. Will Ecology distribute good SMP examples to early adopters and coordinate sharing of drafts between local jurisdictions?

Yes. Our web site, at

http://www.ecy.wa.gov/programs/sea/SMA/st_guide/SMP/index.html links to local examples throughout the steps in the SMP update process. We anticipate that references to good examples will increase as more local examples come in. See also comment (#15) above.

Relationship of SMP to other plans/regulations:

17. To what extent are existing local land use regulations (zoning, Critical Areas, subdivision ordinances, etc) that apply within SMA jurisdiction subject to reevaluation as part of the SMP update? Do they have to be specifically readopted as part of a newly updated SMP?

As noted above, both the GMA and SMA statutes as well as their implementing rules require internal consistency between local comprehensive plan elements and their implementing development regulations, including master programs. In order to ensure this consistency, some level of evaluation on the part of local government is required as part of the local SMP update process. The earlier this occurs in the process, the better. The guidelines, in WAC 173-26-211(3), present specific criteria for testing consistency amongst existing local plans and regulations and proposed SMP provisions, assuring that such provisions when applied to real property do not preclude all viable uses, allowed uses are compatible, and that there is sufficient infrastructure to service allowed shoreline uses. The guidelines also make it clear that it is the responsibility of local government, not Ecology, to assure consistency between the master program and other elements of the locally adopted comprehensive plans and development regulations.

Regarding the second question, local land use regulations only need to be locally "readopted" as part of the newly updated SMP, if the referenced provisions are being directly relied upon to satisfy SMA or guidelines rule requirements. In which case,

they would be considered part of the officially approved SMP, by reference. For more on this topic, see WAC 173-26-191(2)(b).

STATUTORY OR WAC EXCERPTS RELEVANT TO THE QUESTION---

WAC 173-26-020 Definitions. (8) "Development regulations" means the controls placed on development or land uses by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

WAC 173-26-191 Master program contents (1) Master Program Contents (e) Consistency with comprehensive planning and other development regulations. Shoreline management is most effective and efficient when accomplished within the context of comprehensive planning. For cities and counties planning under the Growth Management Act, chapter 36.70A RCW requires mutual and internal consistency between the comprehensive plan elements and implementing development regulations (including master programs). The requirement for consistency is amplified in WAC 365-195-500:

"Each comprehensive plan shall be an internally consistent document and all elements shall be consistent with the future land use map. This means that each part of the plan should be integrated with all other parts and that all should be capable of implementation together. Internal consistency involves at least two aspects:

- (1) Ability of physical aspects of the plan to coexist on the available land.
- (2) Ability of the plan to provide that adequate public facilities are available when the impacts of development occur (concurrency).

Each plan should provide mechanisms for ongoing review of its implementation and adjustment of its terms whenever internal conflicts become apparent."...

And RCW 36.70A.480(1) (The Growth Management Act) states:

"For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations."

Furthermore, RCW <u>36.70A.481</u> states:

"Nothing in RCW $\underline{36.70A.480}$ shall be construed to authorize a county or city to adopt regulations applicable to shorelands as defined in RCW $\underline{90.58.030}$ that are inconsistent with the provisions of chapter $\underline{90.58}$ RCW."

WAC 173-26-191 Master program contents 2) Basic requirements (b) ...Including other documents in a master program by reference. Shoreline master program provisions sometimes address similar issues as other comprehensive plan elements and development regulations, such as the zoning code and critical area ordinance. For the purposes of completeness and consistency, local governments may include other locally adopted policies and regulations within their master programs. For example, a local government may include its critical area ordinance in the master program to provide for compliance with the requirements of RCW 90.58.090(4), provided the critical area ordinance is also consistent with this chapter. This can ensure that local master programs are consistent with other regulations.

WAC 173-26-191 (2)(b) Including other documents in a master program by reference. Shoreline master program provisions sometimes address similar issues as other

comprehensive plan elements and development regulations, such as the zoning code and critical area ordinance. For the purposes of completeness and consistency, local governments may include other locally adopted policies and regulations within their master programs. For example, a local government may include its critical area ordinance in the master program to provide for compliance with the requirements of RCW 90.58.090(4), provided the critical area ordinance is also consistent with this chapter. This can ensure that local master programs are consistent with other regulations.

Shoreline master programs may include other policies and regulations by referencing a specific, dated edition. [Emphasis added] When including referenced regulations within a master program, local governments shall ensure that the public has an opportunity to participate in the formulation of the regulations or in their incorporation into the master program, as called for in WAC 173-26-201 (3)(b)(i). In the approval process the department will review the referenced development regulation sections as part of the master program. A copy of the referenced regulations shall be submitted to the department with the proposed master program or amendment. If the development regulation is amended, the edition referenced within the master program will still be the operative regulation in the master program. Changing the referenced regulations in the master program to the new edition will require a master program amendment.

18. Is a local jurisdiction obligated to amend the Comprehensive Plan and land use regulations <u>outside</u> SMA jurisdiction if the Comprehensive Plan designation for land outside SMA jurisdiction provides for uses that are inconsistent with SMP designations and inconsistent with the no-net-loss-of ecological functions standard? For example, if the CP authorized commercial and industrial use is likely to result in impacts that would degrade the ecological functions in shorelines designated natural or conservancy, must the upland Comprehensive Plan designation be changed?

The short answer is yes. While Ecology has no specific authority to require changes in local (GMA and other) plans or regulations <u>outside</u> of SMA jurisdiction, local government has the obligation, as noted in RCW 90.58.340 below, to ensure that the use policies for lands adjacent to shorelines of the state are consistent with SMA policy and the guidelines. As SMP updates progress, local governments should assess whether this consistency exists (by applying the criteria noted below), and if

not, identify provisions that should be placed on the local docket of comprehensive plans or development regulations requiring future amendment.

It is a judgement call on the part of local governments regarding how and when to address inconsistencies, but ultimately local governments could face legal challenges if inconsistencies are ignored. The Growth Management Hearings Boards could consider the consistency issue if a cause for action were presented.

STATUTORY OR WAC EXCERPTS RELEVANT TO THE QUESTION---

RCW 90.58.340 All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as the [to] achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state.

WAC 173-26-191 Master program contents (1) Master Program Contents (e) Consistency with comprehensive planning and other development regulations.

...Pursuant to the statutes cited above, the intent of these guidelines is to assist local governments in preparing and amending master programs that fit within the framework of applicable comprehensive plans, facilitate consistent, efficient review of projects and permits, and effectively implement the Shoreline Management Act. It should be noted the ecology's authority under the Shoreline Management Act is limited to review of shoreline master programs based solely on consistency with the SMA and these guidelines. It is the responsibility of the local government to assure consistency between the master program and other elements of the comprehensive plan and development regulations.

Several sections in these guidelines include methods to achieve the consistency required by both the Shoreline Management Act and the Growth Management Act. First, WAC 173-26-191 (2)(b) and (c) describe optional methods to integrate master programs and other development regulations and the local comprehensive plan. Second, WAC 173-26-221 through 173-26-251 translate the broad policy goals in the Shoreline Management Act into more specific policies. They also provide a more defined policy basis on which to frame local shoreline master program provisions and to evaluate the consistency of applicable sections of a local comprehensive plan with the Shoreline Management Act.

Finally, WAC 173-26-211(3) presents specific methods for testing consistency between shoreline environment designations and comprehensive plan land use designations.

WAC 173-26-211 Environment designation system. (3) Consistency between shoreline environment designations and the local comprehensive plan. As noted in WAC 173-26-191 (1)(e), RCW 90.58.340 requires that policies for lands adjacent to the shorelines be consistent with the Shoreline Management Act, implementing rules, and the applicable master program. Conversely, local comprehensive plans constitute the underlying framework within which master program provisions should fit. The Growth Management Act, where applicable, designates shoreline master program policies as an element of the comprehensive plan and requires that all elements be internally consistent. Chapter 36.70A RCW also requires development regulations to be consistent with the comprehensive plan.

The following criteria are intended to assist local governments in evaluating the consistency between master program environment designation provisions and the corresponding comprehensive plan elements and development regulations. In order for shoreline designation provisions, local comprehensive plan land use designations, and development regulations to be internally consistent, all three of the conditions below should be met:

- (a) **Provisions not precluding one another.** The comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criteria, the provisions of both the comprehensive plan and the master program must be able to be met. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.
- (b) **Use compatibility.** Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible uses. The intent is to prevent water-oriented uses, especially water-dependent uses, from being restricted on shoreline areas because of impacts to nearby nonwater-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development.
- (c) **Sufficient infrastructure.** Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.

WAC 173-26-251(3)(e) Comprehensive plan consistency. Assure that other local comprehensive plan provisions are consistent with and support as a high priority the policies for shorelines of statewide significance. Specifically, shoreline master programs should include policies that incorporate the priorities and optimum implementation directives of chapter 90.58 RCW into comprehensive plan provisions and implementing development regulations.

19. To what extent should the SMP update process review the infrastructure and services provided in the Comprehensive Plan to ensure that it is adequate to support allowed shoreline uses?

Adequate infrastructure is required by both WAC 173-26-211(3)c) and RCW 36.70A.070(3) and (6). The capital facilities plan element of the comprehensive plan applies within shorelines the same as elsewhere in the jurisdiction. Local governments should be prepared to demonstrate how infrastructure and services promulgated by the local comprehensive plan are consistent with the planned shoreline uses and activities regulated (allowed, conditioned, prohibited) by the updated SMP. Particular attention should be given to whether the capital facilities plan element of the comprehensive plan, specifically the six-year capital facilities

funding plan, is adequate and consistent with shoreline uses planned for in the updated SMP. Again, it is the responsibility of local governments, not Ecology, to resolve any inconsistencies.

STATUTORY OR WAC EXCERPTS RELEVANT TO THE QUESTION---

RCW 36.70A.070 Comprehensive plans -- Mandatory elements. (3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

WAC 173-26-211(3)(c) Sufficient infrastructure. Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.

WAC 173-26-241(3)(i) Recreational Development. For all jurisdictions planning under the GMA, master program recreation policies shall be consistent with growth projections and level-of-service standards established by the applicable comprehensive plan.

20. To what extent should the Master Program update evaluate transportation routes and mandate amendments to a jurisdiction's Comprehensive Plan or CIP/TIP to specify new alignments outside the shoreline for roads that are currently adjacent to shorelines and would need expansion in the future?

The consistency mandate of RCW 90.58.340 and RCW 36.70A.040(A), and .070 requires local jurisdictions to document that they have planned transportation facilities (under their control) where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses, including the option of alignments for new roads or expansion outside shoreline jurisdiction. Planning transportation routes and corridors is most effectively accomplished at the planning level, rather than at a later project review and permitting level.

In sum, proposed transportation routes should be evaluated and considered as local governments demonstrate how they have achieved the no-net-loss of ecological

functions standard at both the "planning" stage of SMP update and mitigated for, when allowed, at the shoreline "permitting" stage.

STATUTORY OR WAC EXCERPTS RELEVANT TO THE QUESTION---

RCW 90.58.100(2) The master programs shall include, when appropriate, the following: (f) Planning for public facilities and utilities correlated with other shorelines uses.

WAC 173-26-241 Shoreline uses. (k) Transportation and parking. Master programs shall include policies and regulations to provide safe, reasonable, and adequate circulation systems to, and through or over shorelines where necessary and otherwise consistent with these guidelines. Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses. Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction.

21. To what extent does Ecology expect the SMP to be specifically coordinated with GMA based Capital Improvement Plans, park plans, watershed plans, and salmon recovery plans AND if those plans are cross-referenced in the SMP – how will Ecology review the content of those plans, if at all?

Again, the internal consistency requirement applies with at least one result being (hopefully) better awareness and coordination amongst plans. It is the responsibility of local government to ensure this coordination occurs. Ecology will not review the content of such plans, UNLESS the local government is directly referencing plan provisions in the SMP for the purpose of satisfying an SMA or guidelines requirement. Please note, that in cases where other plans are specifically referenced, the referenced provisions will be officially considered a part of the local SMP once Ecology approves it.

STATUTORY OR WAC EXCERPTS RELEVANT TO THE QUESTION---

RCW 90.58.100(1)(c): In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

WAC 173-26-186 Governing principles of the guidelines.

(4) The planning policies of master programs (as distinguished from the development regulations of master programs) may be achieved by a number of means, only one of which is the regulation of development. Other means, as authorized by RCW 90.58.240, include, but are not limited to: The acquisition of lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other local governments; and accepting grants, contributions, and appropriations from any public or private agency or individual.

Additional other means may include, but are not limited to, public facility and park planning, watershed planning, voluntary salmon recovery projects and incentive programs.

(7) The planning policies and regulatory provisions of master programs and the comprehensive plans and development regulations, adopted under RCW 36.70A.040 shall be integrated and coordinated in accordance with RCW 90.58.340, 36.70A.480, 34.05.328 (1)(h), and section 1, chapter 347, Laws of 1995.